

Reclamation Manual

Policy

Subject:	Transfers and Conversions of Project Water
Purpose:	This Policy establishes the conditions and procedures to be followed when project water is transferred to a new user or place of use or converted to a new type of use. The benefits of this Policy are that it helps the Bureau of Reclamation address complex water management issues while ensuring that water deliveries are made consistent with applicable state and Federal law and are conducted in an environmentally responsible and cost-efficient manner.
Authority:	The Reclamation Act of 1902 (ch.1093, 32 Stat. 388); the Water Conservation and Utilization Act of 1939 (WCUA) (53 Stat. 1418; 16 USC 590y, <i>et seq.</i>); and acts amending and supplementing these laws
Approving Official:	Commissioner
Contact:	Director, Policy and Administration; Water and Environmental Resources Division, 84-55000

1. **Introduction.** Reclamation supports transfers and conversions of project water as means of promoting flexibility in water management and maximizing project benefits. Reclamation will work with affected State, local, and tribal governments, project partners, and water users to facilitate transfers and conversions within the framework of relevant legal authority. This Policy sets forth associated requirements. The transfers and conversions of project water addressed in this Policy are generally voluntary, taking place between willing parties, though this Policy also applies to transfers and conversions directed by legislation, court order, or other binding authority to the extent that the relevant authority does not address matters covered herein. Reclamation Manual (RM) Directive and Standard (D&S), *Conversions of Project Water from Irrigation Use to Municipal and Industrial Use* (PEC 09-01), provides further requirements specific to conversions from irrigation use to municipal and industrial (M&I) use.

2. **Applicability.**¹ This Policy applies to all Reclamation personnel involved in water-related contracting activities, within the following parameters:
 - A. **Higher-Level Authorities.** This Policy does not override requirements imposed by project-specific legislation,² treaties, judicial directives, or other applicable higher-level authorities, such as Federal regulations and Executive Orders.

¹The requirements set forth in this Policy apply generally to water-related contracting activities. However, given the variability of circumstances affecting these activities, it should be noted that, where circumstances warrant it, requests can be made to the Commissioner for waivers from RM Policy requirements in accordance with Paragraph 4.A. of RM Policy, *Bureau of Reclamation's Directives System (the Reclamation Manual (RM))* (RCD P03) and D&S, *Request for Waiver from a Reclamation Manual (RM) Requirement and Approval or Disapproval of the Request* (RCD 03-03). The Commissioner cannot waive requirements fixed by higher-level authorities.

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- B. Prospective Application to Contracts.** To the extent that this Policy establishes new requirements for water-related contracts, it will be applied prospectively to contracts executed, renewed, amended, or supplemented through the formal contracting process between the contractor and Reclamation on or after its issuing date.³ Contract amendments and supplements executed solely to conform a contract to the discretionary provisions of the Reclamation Reform Act of 1982 (Pub.L. 97-293, Title II, § 201; 43 U.S.C. 390aa, *et seq.*) or that do not provide any additional or supplemental benefit do not initiate the application of new requirements established by this Policy.
3. **Definitions.** The definitions provided at Paragraph 3 of RM Policy, *Water-Related Contracts—General Principles and Requirements* (PEC P05), and the following definitions apply to this Policy where the defined terms are used herein.
- A. Conversion of Contract Water or Conversion (also referred to as change in type of use).** A change in primary purpose for the use of contract water (e.g., from irrigation use to municipal and industrial (M&I) use, as those terms are defined under Paragraph 3 of PEC P05). Where a contractor foregoes its own consumptive uses of contract water, temporarily or permanently, to allow the water to be used for environmental, conservation, or similar purposes under a formal state program designed for those purposes, and the contractor has obtained Reclamation's approval of the arrangement, the change is not a conversion of contract water for purposes of this Policy or PEC 09-01.
- B. Transfer of Project Water or Transfer.** A sale, donation, long or short term lease, or other transfer of project water by a party entitled to it, whether a project contractor or an end water user, to another party outside the project contractor's boundaries, or, in the absence of such boundaries (as when the project contractor is an individual), outside the applicable project service area.
4. **Responsibilities.**
- A. Commissioner.** The Commissioner is responsible for approving or disapproving bases of negotiation (BONs) submitted by the regions requesting authority to execute contracting actions to effectuate proposed transfers and conversions of project water. For requirements regarding the BON process, see RM Policy, *Bases of Negotiation for New and Amendatory Water Service, Repayment, and Related Contracts* (PEC P06), and RM D&S, *Preparing Bases of Negotiation for New and Amendatory Water Service, Repayment, and Related Contracts* (PEC 06-01).
- B. Director, Policy and Administration (Director).** The Director is responsible for developing D&S to implement this Policy and for providing guidance as necessary.

²Including statutes and documents incorporated by reference into statutes, as well as compacts, settlements, and other agreements directed or ratified by Congress.

³These contracting actions are normally requested by the contractor, rather than being sought by the United States.

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The Director is also responsible for reviewing BONs submitted by the regions for the Commissioner's approval and for working with the regions to develop draft approval memoranda for the Commissioner.

- C. **Regional Directors.** Regional directors are responsible for ensuring and generally for overseeing the implementation of this Policy and associated D&S in their regions, including approving or disapproving proposed transfers, conversions, and associated contracting actions within authority delegated to them by the Commissioner and for developing BONs for those contracting actions requiring the Commissioner's approval.
5. **Policy.** It is Reclamation's general policy to encourage and facilitate transfers and conversions of project water within the limits of applicable law⁴ and Reclamation's responsibilities for protecting the interests of the Federal government. Reclamation will not compel transfers or conversions unless required to do so to comply with a legislative directive or judicial decision.
6. **Requirement of a Contract.** Transfers and conversions of project water are subject to the requirement stated at Paragraph 5.A.(1) of PEC P05. The Commissioner or, where the Commissioner has delegated the contracting authority, the regional director will determine whether a new contracting action is required, what contracting authority applies, and which entities must be parties to the contract.
7. **Approval Requirements.** Transfers and conversions of project water require Reclamation's approval, except where the contractor is clearly authorized by contract, Federal statute, court decree, or other controlling authority to execute the transfer or conversion without further approval. Reclamation will not approve proposed transfers or conversions before it confirms that they will meet the following minimum requirements. See PEC 09-01 for further requirements specifically regarding conversions of project water from irrigation use to M&I use.
- A. **Compliance with Law.**
- (1) **Reclamation Law or the WCUA.** All transfers and conversions of project water must comply with Reclamation law or the WCUA, as applicable. Where a contract action is required to effectuate a transfer, the authority for the contract must be identified.
 - (2) **Compliance with Other Federal Law.** Transfers and conversions of project water must also comply with all other applicable Federal laws and must not impair the Secretary of the Department of the Interior's trust obligations to Native Americans.

⁴A transfer or conversion of project water may require a water rights action pursuant to applicable state law, depending on the nature of the change and the decreed or permitted place of use and type of use in project water rights. Relevant determinations will need to be made on a case-by-case basis.

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- (3) **Compliance with State, Tribal, and Local Laws.** Transfers and conversions of project water must comply with all applicable state, tribal, and local laws, including, but not limited to, those concerning the appropriation, diversion, storage, and use of water. Reclamation must determine the effects of these laws on proposed transfers and conversions on a case-by-case basis.
- B. **Protection of Federal Interests.** Transfers and conversions of project water will be effectuated in a manner that ensures the protection of affected Federal interests. Reclamation will approve only those transfers and conversions that it determines to be in the best interests of the United States. Reclamation will not approve any transfer or conversion that it determines to be detrimental to the United States' affected financial or legal status. The required determination will be made on a case-by-case basis.
- C. **Protection of Project.** Project purposes and operations and Reclamation's contractual obligations to others must be protected. The parties proposing a transfer or conversion are primarily responsible for identifying and resolving conflicts with other project beneficiaries and/or operating entities that may arise from the transfer. The contracting officer will consult with other project contractors and/or operating entities, as necessary, to confirm that adequate measures have been taken to identify and address any such conflicts.
8. **Pricing, Charges, and Disposition of Revenues.** Reclamation will avoid burdening transfers and conversions of project water with unnecessary transactional costs, but will ensure that transfers and conversions it approves comply with applicable Federal laws and do not diminish the Federal government's associated financial status. Where project water is converted from irrigation to M&I use, Reclamation reserves its authority to establish the post-conversion M&I rates in accordance with its discretion under applicable law and with RM D&S, *Water Rates and Pricing* (PEC 05-01).
- A. **Pricing of Project Water by Sellers and Lessors.** Reclamation does not determine charges owed to the United States based on prices established between a willing seller or lessor and buyer or lessee. Rather, Reclamation determines charges based on factors identified in this Paragraph 8, in PEC 05-01, and on other factors, as applicable. The seller or lessor retains amounts it obtains that are above those it is obligated to pay the United States.
- B. **Charges Payable to Reclamation for Transferred or Converted Project Water.** Water charges will be determined based on the end use of the water.⁵ Transfers that do not change use do not require pricing adjustments, per se, although they may affect relevant matters such as ability-to-pay and appropriate shares of operation, maintenance, and replacement costs. Where a conversion of project water occurs, an appropriate rate for the new end use must be determined. This may be a negotiated

⁵In the case of transferred/converted project water to be used for mitigation purposes, water charges will be determined based on the purpose of use for which the transferred/converted water is mitigating.

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rate, but must meet the basic requirements set forth herein, under Paragraph 7 of PEC 09-01, and in PEC 05-01, unless project- or contract-specific legislation or other higher-level authority dictates otherwise.

- C. **Administrative Costs.** The contracting entity will also be responsible for reimbursing Reclamation for any administrative costs it incurs in formalizing the transfer or conversion that it would not otherwise have incurred, except to the extent that relevant law makes these costs non-reimbursable. This includes costs Reclamation incurs for services it provides pursuant to environmental and historic preservation compliance activities, issuance of permits, and other services, as applicable.
 - D. **Disposition of Revenues Received by Reclamation.** Revenues received by Reclamation from rates and charges associated with transfers and conversions of project water will be credited in accordance with the applicable laws and the policies in effect at the time.
 - E. **Reallocation of Construction Costs.** Cost reallocation will only be considered for permanent conversions of project water. Regional directors will determine whether permanent conversions require cost reallocation on a case-by-case basis, in consultation with Policy and Administration and the Office of the Solicitor. Under section 302 of the Department of Energy Organization Act (the McGovern Amendment) (42 USC 7152), conversions requiring reallocation of joint costs on multipurpose projects after a final cost allocation has been completed must be approved by Congress, provided that if Congress expressly authorizes changes in the uses of project water, then the authority to reallocate costs to reflect those changes is implied.
9. **Documentation.** All transfers or conversions of project water that are subject to this Policy must be documented in a manner adequate to serve as an official administrative record. Documentation will include all information required in formalizing a transfer or conversion in accordance with this Policy and, in the case of conversions from irrigation use to M&I use, with PEC 09-01. BONs submitted for the Commissioner's approval will include or be accompanied by the documentation required hereunder.
10. **Relationship to Other Policies and D&S.** Any contracts required to effectuate transfers or conversions of project water will be proposed, approved, negotiated, and executed in accordance with all applicable RM Policy and D&S in existence at the time.